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Joaquin Espuelas Penalva

15508NP

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7590

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EXAMINER

CHOI, PETER Y

ART UNIT

PAPER NUMBER

1794

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,283	<b>Applicant(s)</b> PENALVA, JOAQUIN ESPUELAS	
	<b>Examiner</b> PETER Y. CHOI	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 28-30, 52-54, 56 and 57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-30, 52-54, 56 and 57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 16, 2009, has been entered.

### ***Claim Objections***

2. Claim 54 is objected to because of the following informalities: the claim recites that the nonwoven fabric has "a thicknesses of 0.1 to 15cm." It appears that "thicknesses" should be "thickness." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 28-30, 52-54, 56, and 57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

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Regarding claims 28-30, 52-54, 56, and 57, claims 28, 56 and 57 recite that the filter traps and eliminates Legionella Pneumophila. Applicant's specification as originally filed, and as amended in Applicant's substitute specification of June 18, 2008, does not provide support for the claimed limitation, wherein the filter necessarily traps and eliminates Legionella Pneumophila. Therefore, the recited limitation constitutes new matter. Additionally, claims 28, 56 and 57 recite that the fibers "being of a type selected from the group consisting of" various fibers. Applicant's specification as originally filed, and as amended in Applicant's substitute specification of June 18, 2008, does not provide support for the claimed limitation, wherein the fibers are of a type selected from the claimed Markush group. Therefore, the recited limitation constitutes new matter.

Regarding claim 52, the claim recites that the filter is formed by a method comprising obtaining the filter using conventional machines. Applicant's specification as originally filed, and as amended in Applicant's substitute specification of June 18, 2008, does not provide support for the claimed limitation, such that the filter is obtained using conventional machines. Therefore, the recited limitation constitutes new matter.

Regarding claim 56, the claim recites that the filter are further defined as being constructed as a sandwich that is formed from a mixture of two nonwoven fabrics. Applicant's specification as originally filed, and as amended in Applicant's substitute specification of June 18, 2008, does not provide support for the claimed limitation, wherein the filter is constructed as a sandwich that is formed from a mixture of two nonwoven fabrics. Therefore, the recited limitation constitutes new matter.

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5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 28-30, 52-54, 56, and 57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 28-30, 52-54, 56, and 57, claims 28, 56 and 57 recite that the fibers are previously treated with anti-bacterial compounds so that the anti-bacterial compound is integrated into all of the body and core of the fiber. The claims each appear to recite the inclusion of multiple anti-bacterial compounds, but further recite that the singular anti-bacterial compound is integrated in the fiber. It is unclear what the scope of the claimed invention entails as the claim is inconsistent with the recitation of the anti-bacterial compound. Is the fiber required to comprise multiple anti-bacterial compounds, in which only one anti-bacterial compound is integrated into the fiber or another embodiment?

Additionally, regarding claims 28-30, 52-54, 56, and 57, claims 28, 56 and 57 recite that the fibers "being of a type selected from the group consisting of natural polymer chemical fibers which have or have not been modified" and various other fibers. The limitation "fibers being of a type" is unclear as to whether the fibers in the Markush group are required or whether the fibers can be a "type of fiber" not included within the Markush group.

Regarding claim 53, the claim recites that the group further consists of artificial fibers, natural fibers and combinations of artificial and natural fibers. Claim 28, from which claim 53 depends, recites various fibers as a Markush group. However, claim 28 does not recite natural fibers or combinations of artificial fibers and natural fibers. A Markush group is by its nature

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closed. Therefore, it is unclear what is the scope of the fibers of claim 53 as the recitation of the fibers in claim 53 appears to broaden the scope of the claim from which it depends.

Regarding claims 56 and 57, each of the claims recite “a filter selected from a group consisting of nonwoven fabric, filtering injector structures and sheets.” It is unclear whether Applicant is attempting to claim the filters of claims 56 and 57 as Markush groups. Alternative expressions such as a Markush group, recites members as being “selected from the group consisting of A, B and C.” When materials recited in a claim are so related as to constitute a proper Markush group, they may be recited in the conventional manner, or alternatively. For example, if “wherein R is a material selected from the group consisting of A, B, C and D” is a proper limitation, then “wherein R is A, B, C or D” shall also be considered proper. Applicant recites that the filters are selected from *a* group in contrast to fibers selected from *the* group. If Applicant intends to recite the group as a Markush group, corrections are required.

Additionally, regarding claim 56, the claim recites that the filter are defined as being constructed as a sandwich that is formed from a mixture of two nonwoven fabrics. It is unclear whether Applicant is claiming a single filter or multiple filters. Additionally, it is unclear what structure is claimed. Does the filter comprise two nonwoven fabrics that are sandwiched by two other fabrics, or does the sandwich structure, in totality, only comprise two nonwoven fabrics?

Additionally, regarding claim 57, the claim recites that the filter comprises a nonwoven fabric and a second component. Applicant has not recited a first component. It is unclear whether the filter is further defining only the nonwoven fabric and a second component, or if one of the previously recited limitations in claim 57 is intended to be a first component.

***Claim Rejections - 35 USC § 102/103***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 28-30, 52-54, 56, and 57 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US Pub. No. 2003/0170453 to Foss.

Regarding claims 28-30 and 52-54, Foss teaches a filter in any installation at risk from Legionella Pneumophila proliferation comprising a filter selected from the group consisting of non-woven fabric, filtering injector structures and sheets, the filter is formed from fibers cut or in monofilaments and their mixtures, each of the fibers previously treated with anti-bacterial compounds so that the anti-bacterial compound is integrated into all of the body and core of the fiber, the fibers being of a type selected from the group consisting of natural polymer chemical fibers which have or have not been modified, synthetic polymer chemical fibers, glass fibers, carbon fibers, other fibrous materials, bicomponents, and polycomponents (see entire document including paragraphs 0002-0013, 0089-0120, 0145, 0147, 0167-0180, 0211-0231, 0240, 0264-0278, 0287-0298, 0369, 0370, 0398, 0399, Figure 1C).

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Regarding claims 28-30 and 52-54, Foss does not appear to specifically teach that the filter is used for filtration and elimination of Legionella Pneumophila and wherein the filter traps and eliminates Legionella Pneumophila. However, the limitations are a recitation of the intended use of the filter. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Since Foss teaches a substantially similar structure and composition (nonwoven fabric comprising the claimed fibers and an anti-bacterial compositions such as silver zeolite) as the claimed invention, the invention of Foss appears to be capable of performing the claimed intended use.

Regarding claims 28-30 and 52-54, Foss does not appear to specifically teach that the treated fibers exhibit anti-bacterial properties at temperatures above 200°C. Although the prior art does not disclose the claimed property, the claimed property is deemed to be inherent to the structure in the prior art since the Foss reference teaches an invention with a substantially similar structure and chemical composition (nonwoven fabric comprising the claimed fibers and an anti-bacterial compositions such as silver zeolite) as the claimed invention. Products of identical structure and composition cannot have mutually exclusive properties. The burden is on the Applicant to prove otherwise.

Regarding claim 29, the non-woven fabric is formed from a mixture of two or more types of fibers and wherein the mixture of two or more fibers includes 0.5 to 99.5% of a first type fiber and the remainder of a second type fiber, or for example 15% of a first type fiber and the remainder of a second type fiber (paragraphs 0145, 0211-0231, 0244-0251).



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Regarding claim 30, the fibers have a fiber thickness in the range of 0.02 to 1,500 deniers, or at least about 1 denier to about 22.5 denier, a cross section selected from a group consisting of circular, square, elliptical, hollow, trilobal, flat and similar, and a length in the range of 0.1 mm to 500 mm or continuous filaments (paragraphs 0089-0120, 0145, 0211-0231).

Regarding claim 30, Foss does not appear to specifically teach a weight in the range of from 5 to 2,500 grams, a fusion point in the range of from 60° C to 450°C, and a range in color from translucent / white to black and any combinations thereof. Although the prior art does not disclose claimed properties, the claimed properties are deemed to be inherent to the structure in the prior art since the Foss reference teaches an invention with a substantially similar structure and chemical composition (nonwoven fabric comprising the claimed fibers and an anti-bacterial compositions such as silver zeolite) as the claimed invention. Products of identical structure and composition cannot have mutually exclusive properties. The burden is on the Applicant to prove otherwise. Additionally, since the fibers of Foss appear to be identical and/or substantially similar to the fibers disclosed in Applicant's specification pages 29-33, and the fibers of Foss comprise the claimed fiber thickness, cross section and length, it is reasonable to presume that those fibers additionally comprise the identical and/or substantially similar weight, fusion point, and color, absent evidence to the contrary. It should be noted that the fibers of Foss may additionally be dyed (*see for example* paragraph 0120) and that fibers inherently possess a color from white to black in the color spectrum.

Regarding claim 52, Foss appears to teach that the filter is formed by a method comprising obtaining the filter using conventional machines selected from the group consisting of Splitters, mixers, carding machines, cross lappers, felt machines, sewing machines, extruders,

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injectors, laminators, pre- needle punching machines, needle punchers, structurers, calendars, drying and thermofixing ovens, electrically resistant machines, direct or indirect gas flame machines, infra red thermofusion machines, embossers, welders, gluers, latex or resin and anti-bacterial component inductors, ultrafrequency machines, felting machines, fulling machines, powder application machines, fabric gluing machines, padding machines, and scrapers (paragraphs 0002-0013, 0089-0120, 0145, 0147, 0153, 0167-0180, 0211-0231, 0264-0278, 0287-0299, 0301, 0369, 0398, 0399). However, it should be noted that the filter of claim 28, from which claim 52 depends, claims a filter product and the limitation set forth in claim 52 appears to recite a product by process limitation. Absent a showing to the contrary, it is Examiner's position that the article of the applied prior art (nonwoven fabric comprising the claimed fibers and an anti-bacterial compositions such as silver zeolite) is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself.

Regarding claim 53, the group further consists of artificial fibers, natural fibers and combinations of artificial and natural fibers (paragraphs 0145, 0211-0231, 0240).

Regarding claim 54, the nonwoven fabric has a thickness of 0.1 to 15 cm, or for example 1.27 cm to 3.81 cm (paragraphs 0240, 0370).

Regarding claim 56, Foss teaches a filter in any installation at risk from Legionella Pneumophila proliferation comprising a filter selected from a group consisting of nonwoven fabric, filtering injector structures and sheets, the filter is formed from fibers cut or in monofilaments and their mixtures, each of the fibers previously treated with anti-bacterial compounds so that the anti-bacterial compound is integrated into all of the body and core of the

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fiber, the anti-bacterial compound is selected from the group consisting of silver derivatives, phenoxyhalogenate derivatives with transporters, permethrin derivatives, isothiazolinone derivatives, tetraalkylammonium silicates, organozinc compounds, zirconium phosphates, sodium triazine, oxazolidinones, isothiazolines, hermines, ureides, isocyanates, chlorine derivatives, formaldehydes, and carbendazim, the fibers being of a type selected from the group consisting of natural polymer chemical fibers which have or have not been modified, synthetic polymer chemical fibers, glass fibers, carbon fibers, other fibrous materials, bicomponents, and polycomponents, the filter are further defined as being constructed as a sandwich that is formed from a mixture of two nonwoven fabrics (see entire document including paragraphs 0002-0013, 0089-0120, 0145, 0147, 0167-0180, 0211-0231, 0240, 0264-0278, 0287-0298, 0367-0370, 0398, 0399, Figure 1C).

Regarding claim 56, Foss does not appear to specifically teach that the filter is used for filtration and elimination of *Legionella Pneumophila* and wherein the filter traps and eliminates *Legionella Pneumophila*. However, the limitations are a recitation of the intended use of the filter. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Since Foss teaches a substantially similar structure and composition (nonwoven fabric comprising the claimed fibers and an anti-bacterial compositions such as copper, zinc, tin and/or silver zeolite) as the claimed invention, the invention of Foss appears to be capable of performing the claimed intended use.

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Regarding claim 56, Foss does not appear to specifically teach that the treated fibers exhibit anti-bacterial properties at temperatures above 200°C. Although the prior art does not disclose the claimed property, the claimed property is deemed to be inherent to the structure in the prior art since the Foss reference teaches an invention with a substantially similar structure and chemical composition (nonwoven fabric comprising the claimed fibers and an anti-bacterial compositions such as silver zeolite) as the claimed invention. Products of identical structure and composition cannot have mutually exclusive properties. The burden is on the Applicant to prove otherwise.

Regarding claim 57, Foss teaches a filter in any installation at risk from Legionella Pneumophila proliferation comprising a filter selected from a group consisting of nonwoven fabric, filtering injector structures and sheets, the filter is formed from fibers cut or in monofilaments and their mixtures, each of the fibers previously treated with anti-bacterial compounds so that the anti-bacterial compound is integrated into all of the body and core of the fiber, the anti-bacterial compound is selected from the group consisting of silver derivatives, phenoxyhalogenate derivatives with transporters, permethrin derivatives, isothiazolinone derivatives, tetraalkylammonium silicates, organozinc compounds, zirconium phosphates, sodium triazine, oxazolidinones, isothiazolines, herminformals, ureides, isocyanates, chlorine derivatives, formaldehydes, and carbendazim, the fibers being of a type selected from the group consisting of natural polymer chemical fibers which have or have not been modified, synthetic polymer chemical fibers, glass fibers, carbon fibers, other fibrous materials, bicomponents, and polycomponents, the filter is further defined as being constructed from a nonwoven fabric and a second component selected from the group consisting of polypropylene, polyethylene, polyester,

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glass fiber, steel, aluminum and foam supports (see entire document including paragraphs 0002-0013, 0089-0120, 0145, 0147, 0167-0180, 0211-0231, 0240, 0264-0278, 0287-0298, 0367-0370, 0398, 0399, Figure 1C).

Regarding claim 57, Foss does not appear to specifically teach that the filter is used for filtration and elimination of Legionella Pneumophila and wherein the filter traps and eliminates Legionella Pneumophila. However, the limitations are a recitation of the intended use of the filter. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Since Foss teaches a substantially similar structure and composition (nonwoven fabric comprising the claimed fibers and an anti-bacterial compositions such as silver zeolite) as the claimed invention, the invention of Foss appears to be capable of performing the claimed intended use.

Regarding claim 57, Foss does not appear to specifically teach that the treated fibers exhibit anti-bacterial properties at temperatures above 200°C. Although the prior art does not disclose the claimed property, the claimed property is deemed to be inherent to the structure in the prior art since the Foss reference teaches an invention with a substantially similar structure and chemical composition (nonwoven fabric comprising the claimed fibers and an anti-bacterial compositions such as silver zeolite) as the claimed invention. Products of identical structure and composition cannot have mutually exclusive properties. The burden is on the Applicant to prove otherwise.

In the event it is shown that Foss does not disclose the claimed invention with sufficient specificity, the invention is obvious because Foss discloses the claimed constituents and discloses that they may be used in combination.

***Claim Rejections - 35 USC § 103***

9. Claim 28-30, 52-54, 56, and 57 are rejected under 35 U.S.C. 103(a) as obvious over Foss in view of US Pub. No. 2003/0031687 to Falder.

Regarding claims 28-30, 52-54, 56, and 57, in the event it is shown that Foss does not teach an anti-bacterial compound with sufficient specificity, Falder teaches that it was known in the anti-bacterial filter art to form a filter comprising an anti-bacterial such as zinc and methylisothiazolone (Falder, paragraphs 0001, 0030-0032, 0045-0087, 0090-0101, 0250-0285, Tables 13-15). Additionally, Falder teaches that known anti-bacterial agents include silver and chlorinated compounds (Falder, paragraphs 0020-0026). Therefore, it would have been obvious to one of ordinary skill in the anti-bacterial filter art at the time the invention was made to make the anti-bacterial filter of Foss, with the anti-bacterial agents, as taught by Falder, motivated by the expectation of forming a conventional filter with anti-bacterial agents known in the art to be predictably suitable and functionally equivalent in the anti-bacterial filter art.

Regarding claims 28-30, 52-54, 56, and 57, the prior art does not appear to specifically teach that the treated fibers exhibit anti-bacterial properties at temperatures above 200°C. Although the prior art does not disclose the claimed property, the claimed property is deemed to be inherent to the structure in the prior art since the prior art teaches an invention with a substantially similar structure and chemical composition (nonwoven fabric comprising the

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claimed fibers and an anti-bacterial compositions such as silver zeolite, chlorinated compounds, and/or methylisothiazolone) as the claimed invention. Products of identical structure and composition cannot have mutually exclusive properties. The burden is on the Applicant to prove otherwise.

### ***Response to Arguments***

10. Applicant's arguments filed March 16, 2009, have been fully considered but they are not persuasive. Applicant argues that the anti-microbial of Foss is found only in part of the fiber. Examiner respectfully disagrees. Foss teaches multiple embodiments of the anti-microbial fiber, including one wherein the anti-microbial additive is distributed uniformly within a yarn or fabric (Foss, paragraph 0107). Additionally, Foss teaches that the anti-microbial agents can be intermixed within the polymer during fiber formation, and that the concentration of the anti-microbial agent can be varied within the fiber (Id., paragraph 0120), such as shown in Figure 1C. Therefore, the antimicrobial fiber of Foss appears to be within the scope of the claimed fibers.

Applicant argues that the claimed fibers exhibit anti-bacterial properties at temperatures exceeding 200°C, and that the invention of Foss would not be viable at high temperatures. Examiner respectfully disagrees. Applicant has not shown or provided evidence that the invention of Foss is incapable of exhibiting any anti-bacterial properties at temperatures exceeding 200°C, or that the invention of Foss would not be viable at high temperatures. Since Foss teaches a substantially similar structure and chemical composition (nonwoven fabric comprising the claimed fibers and an anti-bacterial compositions such as silver zeolite) as the

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claimed invention, the claimed characteristics appear to be inherent to the invention of the prior art, absent evidence to the contrary.

Applicant argues that the binder of Foss would melt, causing the filter to breakdown at temperatures above 140°C, and the use of a binder with a melting point of lower temperatures would teach away from the claimed invention. Examiner respectfully disagrees. Foss teaches various polymers suitable for use as the anti-microbial fibers of Foss, including polyethylene, polypropylene, polyethylene terephthalate, styrene, and polyamides (Id., paragraph 0105), which are substantially similar and/or identical with those set forth in Applicant's specification, page 13 of the Amended Specification of June 18, 2008, as suitable for the claimed invention. Since Foss teaches a substantially similar structure and chemical composition (nonwoven fabric comprising the claimed fibers and an anti-bacterial compositions such as silver zeolite) as the claimed invention, the claimed characteristics appear to be inherent to the invention of the prior art, absent evidence to the contrary.

Additionally, Foss does not teach that the filter is required to break down at 140°C and/or that the anti-microbial fibers can not exhibit anti-bacterial properties at temperatures above 200°C. Therefore, Foss does not appear to teach away from the claimed invention.

Additionally, it is well-settled that unsupported arguments are not a substitute for objective evidence. Applicant has not provided evidence that the treated fibers can not exhibit anti-bacterial properties at temperatures above 200°C.



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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER Y. CHOI whose telephone number is (571)272-6730.

The examiner can normally be reached on Monday - Friday, 08:00 - 15:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Peter Y Choi /PYC/  
Examiner, Art Unit 1794

/Andrew T Piziali/  
Primary Examiner, Art Unit 1794